



Paper No. 21

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AUG 07 2003

OFFICE OF PETITIONS

In re Application of :
NICOLAIDES et al. : DECISION ON PETITION
Application No. 09/853,646 :
Filed: May 14, 2001 :
Attorney Docket No. :
001107.00138 :

This is a decision on the petition under 37 CFR 1.182, filed on May 27, 2003, to reinstate an original claim of priority. In the alternative, applicants submitted a petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 USC 119(e) for the benefit of prior filed provisional application No. 60/203,905.

The petition under 37 CFR 1.182 is dismissed as moot because the petition is properly treated as a petition under 37 CFR 1.78(a)(6).

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5), and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge as set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed as unintentional; and
- (3) the reference to the prior filed provisional application, supplied in an application data sheet, or as an amendment in the first sentence of the specification following the title. See 35 USC 119(e) and 37 CFR 1.78(a)(5). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The present nonprovisional application was filed on Monday, May 14, 2001, within twelve months of the May 12, 2000 filing date of provisional application No. 60/203,905, for which priority is claimed.¹ The specification as filed claimed the benefit of provisional application No. 60/203,905; however, applicants indicated an incorrect filing of May 11, 2000.

Presently, applicants have filed an amendment to perfect the claim of priority to provisional application No. 60/203,905, with the correct filing date of May 12, 2000. The record indicates that the Office recognized the claim for benefit of prior filed provisional application No. 60/203,905, stating that the filing date that applicants provided was inconsistent with USPTO records. The priority information has been updated in the USPTO records to reflect applicants' perfection of the priority claim. A corrected filing receipt is enclosed. Further, Office Patent Application Location and Monitoring ("PALM") Intranet Pre-Grant Publication Information records indicate that the present application was published on May 9, 2002. In view thereof, a petition under 37 CFR 1.78(a)(6) is unnecessary.

This petition is hereby **dismissed as moot**. No petition fee has been charged.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being returned to Technology Center Art Unit 1632 for review of the amendment filed on May 27, 2003.

¹ "When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day."
35 USC 21(b).

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 306-5589.

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